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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re K.B., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

M.G.,

Defendant and Appellant.

E071908

(Super.Ct.No. SWJ1100314)

OPINION

APPEAL from the Superior Court of Riverside County. Susanne S. Cho, Judge.
Affirmed.

William D. Caldwell, under appointment by the Court of Appeal, for Defendant
and Appellant.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman, and Julie
Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

I

INTRODUCTION

M.G. is the mother of 11-year-old K.B.¹ K.B. was removed from Mother's care due to Mother's history of abusing controlled substances, history with Riverside County Department of Public Social Services (DPSS), and involvement in an abusive relationship. On appeal, Mother argues the juvenile court abused its discretion and violated her due process rights when it denied her request for a continuance. We find no error and affirm the judgment.

II

FACTUAL AND PROCEDURAL BACKGROUND

A. *Prior Child Welfare History*

On May 10, 2011, DPSS received a referral alleging general neglect of then three-year-old K.B. The referral stated Mother was intoxicated and pushed the maternal stepgrandfather down some stairs. The maternal stepgrandfather pinned Mother down and she bit him on the arm. K.B. was present during the altercation. Mother was placed on a psychiatric hold. She was reportedly bipolar and not taking her medication. During the investigation, Mother admitted to abusing methamphetamine, marijuana, and alcohol. She also had a history of suicide attempts, an untreated mental health diagnosis, and domestic violence with Father. As a result, K.B. was removed from Mother's care.

¹ K.B.'s father, J.B. (Father), is deceased.

On May 12, 2011, a Welfare and Institutions Code² section 300 petition was filed on behalf of K.B. due to Mother's substance abuse, domestic violence history, and untreated mental health issues.

Following a contested jurisdictional/dispositional hearing, K.B. was declared a dependent of the court and the parents were provided with reunification services. On November 29, 2012, at the 18-month review hearing, K.B. was returned to Mother's care on family maintenance services.

On May 29, 2013, the court granted Mother sole physical and legal custody of K.B. and terminated the dependency.

On December 3, 2014, DPSS received another general neglect referral stating Mother was observed to be "on something." In addition, about two weeks earlier, K.B. fell off a jungle gym at a playground and had sustained a gash on her back. Mother failed to seek medical care for the gash. Further, K.B. appeared "pale," was not talkative, and was aware her father had committed suicide about a month before. There were also concerns that K.B., who was born without a functioning thyroid and required daily medication, was not taking her medication. Mother was observed to have bruises on her face. There were further concerns that Mother did not have adequate housing and had given temporary guardianship of K.B. to the paternal grandmother. Mother was unable to

² All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

be located during the investigation, and the referral was subsequently closed as inconclusive.

On May 18, 2015, DPSS received another referral with allegations of general neglect and domestic violence. The referral stated that K.B. resided with Mother and her boyfriend, R.T., who was a known drug dealer, and that Mother and R.T. were rumored to be methamphetamine users. Mother was also known to behave erratically, drink alcohol excessively, stay awake, and sleep for days at a time. Mother was arrested in December 2014 for a drug-related offense and had a warrant for failing to appear in court. In addition, there was a known history of domestic violence between Mother and R.T. during which they threw objects at each other. Mother denied the allegations.

DPSS received a secondary referral on June 4, 2015, when police requested immediate response to the home due to a call regarding an alleged shooting at the home. The home was allegedly a known drug house with gang affiliation. Several bullet holes were observed on the house, and some bullets entered the home just above K.B.'s bed. Law enforcement also located stolen ATV's in the backyard of the home and arrested R.T. Law enforcement did not find Mother to have knowledge of the stolen items at the home, but "was guilty of poor decision making." At the conclusion of the investigation, K.B. was in the care of the maternal grandmother and the referral was closed as inclusive.

On December 15, 2017, DPSS received another referral with allegations of general neglect. A search warrant was served at Mother's home the prior day, and the home was found to contain stolen property, including a firearm. Mother and R.T. were arrested.

They were both known drug addicts with a preference for methamphetamine and heroin. K.B. was not at home during the search. During a follow-up investigation, K.B. voluntarily disclosed that R.T. had stabbed Mother in the back with a knife and hit Mother. Mother was observed with multiple bruises on her body during her arrest. K.B. also indicated that she heard her mother and R.T. discussing burglaries they had been involved in and a police chase. K.B. further disclosed drug use by R.T. and Mother, R.T. stealing “stuff” and shooting a gun “at people,” and observing domestic violence with injuries between Mother and R.T. K.B. went to stay with the maternal grandmother, and the referral was closed as substantiated.

B. Current Dependency

The family again came to the attention of DPSS on August 16, 2018, after allegations of general neglect and domestic violence were received. The referral stated Mother and R.T. were abusing drugs and that there was ongoing domestic violence in the relationship. Mother had claimed that she needed help getting out of the relationship because R.T. abused her. The reporting party requested a welfare check and law enforcement responded to the home. Officers attempted to speak with Mother about R.T. However, Mother would not say anything about him.

On August 22, 2018, the social worker interviewed K.B., who was 10 years old at the time. K.B. reported that R.T. resided in the home with her and Mother and that sometimes her mother and R.T. fought. K.B. was usually in another room when they fought and screamed at each other. K.B. reported being “kind of scared.” K.B. had

called law enforcement once because she was scared her mother and R.T. would hurt each other. K.B. also described Mother and R.T. engaging in marijuana use while she was in the home.

On August 23, 2018, the social worker learned that Mother and R.T. had lengthy criminal histories for crimes against property and drugs and that R.T. was a known intravenous heroin user. R.T. was on supervised release. In addition, different people were frequently in and out of Mother's home. Law enforcement provided information to the social worker regarding five contacts at Mother's home over the last four months. One contact included K.B. calling law enforcement stating "mommy and daddy are fighting."

The maternal grandmother reported receiving a message from Mother stating she was being "poked and hurt" by R.T. K.B. reported to the maternal grandmother on numerous occasions that Mother and R.T. fought "a lot" and that although she did not see the fights, she could hear them. During a welfare check, officers informed the maternal grandmother that Mother appeared to be under the influence of an unknown substance. K.B. was in the home sleeping when the officers conducted the welfare check. The maternal grandmother was worried R.T. would hurt Mother if he found out she wanted to leave him.

On August 28, 2018, the maternal grandmother contacted the social worker to report that she had not spoken with Mother for two weeks and that she received a call from K.B.'s school stating K.B. had been absent from school for two days. The maternal

grandmother was very concerned about Mother and K.B. and continued to be concerned for them. The maternal grandmother reported that Mother had a long history of substance abuse beginning in her teenage years and that she had obtained numerous services for Mother in the past. The maternal grandmother believed that Mother and R.T. were currently abusing methamphetamine. She noted that Mother had a prior mental health disorder but was unsure whether it was still affecting her. She also noted that Mother had completed nursing school and was intelligent.

On September 12, 2018, social workers went to Mother's home, and noticed Mother had an "extensive amount of bruising on her legs." She had 12 bruises on her right leg, bruising on her right forearm that was in the shape of a fingerprint, and a bruise on the back of her left upper arm that was in the shape of a fingerprint. Mother's left pointer finger was smashed and the nail was black. Mother stated that she did not notice the bruises, despite the bruises being "very visible." She also denied any domestic violence, the visible bruises being caused by R.T., and recent drug use. She denied having any knowledge of R.T. being a heroin user, despite his probation officer being aware of his use and her four-year relationship with R.T. She claimed that she had not seen R.T. in the last two weeks and that she had attempted to file a restraining order against R.T. Mother declined all services offered to her but accepted a list of contact information for services. She refused to participate in a drug test or give the social worker permission to take photos of her bruises.

On September 25, 2018, the paternal grandmother reported ongoing concerns about K.B. She noted Mother's drug use, K.B. being completely blind in one eye, and not having her medical needs met. She stated that Mother hid drugs in the medicine cabinet of the bathroom, and K.B. knew where the drugs were located. K.B. resided with the paternal grandmother during the summer, and she did not want to return to Mother's home at the end of the summer. The paternal grandmother was concerned that K.B. was being "passed around" to various relatives to be cared for which affected her school attendance.

On September 25, 2018, K.B. reported that R.T. continued to live in her home. K.B. slept in the front house on the property by herself all night while Mother and R.T. slept in the back house.

On September 27, 2018, a petition was filed on behalf of K.B. pursuant to section 300, subdivision (b) (failure to protect).

At the September 28, 2018 detention hearing, K.B. was formally detained from Mother's custody and placed with the paternal grandmother. Mother was provided with services and supervised visits with K.B. once a week for two hours, pending the jurisdictional/dispositional hearing.

On October 16, 2018, DPSS filed a jurisdictional/dispositional report. In the report, DPSS recommended the allegations in the petition be found true, K.B. be declared a dependent of the court, and Mother be offered reunification services. The social worker spoke with K.B. on October 11, 2019. K.B. provided further details concerning domestic

violence incidents between Mother and R.T., and drug use by R.T. and Mother. K.B. reported witnessing Mother and R.T. smoke from a pipe in the back of the house, and Mother acting “crazy” when she smoked. K.B. noted Mother would get mad and fight with R.T., and during one incident, Mother threw boiling water at R.T. K.B. also stated that on another occasion, R.T. punched Mother and pulled out a gun. In yet another incident, R.T. hit Mother with a cord. K.B. reported that Mother and R.T. fought at least 15 times a month and that law enforcement had visited her home numerous times. K.B. reported that she was happy in her paternal grandparents’ home and did not want to go back to her home with Mother. K.B. noted that her paternal grandparents made her feel safe and secure.

Mother continued to deny the allegations in the petition, claimed she was engaged to R.T., and reported that she was drug and alcohol free. She denied having mental health issues. In addition, Mother cancelled several visits with K.B. The paternal grandmother reported that K.B. was disappointed to know Mother failed to show for visits. K.B. stated to the paternal grandmother that she did not believe Mother would show up for visits or call because it was the beginning of the month, which meant she got her monthly check and would buy drugs with R.T.

On October 19, 2018, a contested hearing was set by Mother.

On November 8, 2018, DPSS filed an addendum report with no changes to the previous recommendations. In the addendum report, the social worker noted that Mother missed visits with K.B. on October 29 and November 5, 2018. The social worker was

unable to verify if Mother was enrolled in parenting or substance abuse classes. The service provider informed the social worker on November 6, 2018, that Mother was supposed to submit to a pre-assessment for substance abuse treatment on October 30, 2018, but Mother was a “no show.” On November 2, 2018, Mother asked the social worker for the contact information for her required service providers, and the social worker provided Mother with the information. Mother stated she had an intake appointment scheduled for counseling on November 14, 2018. R.T. was incarcerated.

The contested jurisdictional/dispositional hearing was held on November 14, 2018. At that time, Mother’s counsel requested additional time for Mother to review the November 8, 2018 addendum report. Mother’s counsel noted that Mother had “just received the addendum today” because it was not mailed to her and that Mother wanted time to review the addendum report and provide a declaration or statement of facts to defend herself. Mother’s counsel further stated that Mother wanted a continuance to obtain a number of documents from various programs for certificates and police reports she wanted to present to the court. The court noted that the “most” it could give Mother was “next week” under the statutory time allowed by law. Mother’s counsel responded, “That’s what she is requesting.”

Counsel for DPSS objected to the request for a continuance. Counsel argued the addendum report was timely filed and there were no changes to the recommendations and no change to the information that was originally available. DPSS’s counsel noted the addendum report provided updated information since the last court hearing, “so not

anything that needs new rebuttal information or new evidence to be brought forward.”

Minor’s counsel also objected to the continuance request. Minor’s counsel asserted that even if Mother was enrolled in every single program, it would not change the recommendation of reunification services and that there was substantial evidence Mother repeatedly exposed K.B. to drugs, domestic violence, arrests, and criminal activity.

The juvenile court denied Mother’s request for a continuance, finding: “This has been ongoing for almost two months. Mother had ample time to be ready for today’s hearing. I don’t think the addendum really changes anything, and so I would like to proceed.” The court further stated that Mother was not precluded from testifying and that she did not have to write everything down in a declaration or written report. Mother’s counsel responded that Mother did not want to testify but asked to make a brief statement, which the court allowed. Mother claimed that she was given the addendum report 10 minutes before the court hearing and believed there were “a lot of false allegations.” She also asserted that she was not given a chance on family maintenance and wanted K.B. returned to her care.

Following argument, the juvenile court found true the allegations in the petition, declared K.B. a dependent of the court, and provided Mother with reunification services and supervised visits once a week for two hours.

On December 27, 2018, Mother filed a timely notice of appeal.

III

DISCUSSION

Mother argues the juvenile court abused its discretion and violated her due process rights when it denied her request for a continuance. For the reasons explained below, we disagree.

A. *Abuse of Discretion*

“Section 352 is the primary statute governing continuances in [juvenile] dependency cases.” (*Renee S. v. Superior Court* (1999) 76 Cal.App.4th 187, 194.) Section 352, subdivision (a), provides that continuances shall be granted only on a showing of “good cause” and that “written notice shall be filed at least two court days prior to the date set for hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance.” Moreover, no continuance shall be granted if it is contrary to the minor’s best interests. (§ 352, subd. (a); *In re Ninfa S.* (1998) 62 Cal.App.4th 808, 810-811 (*Ninfa S.*.) The statute specifically ““mandates that before the court can grant a continuance, it must ‘give substantial weight to a minor’s need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.’”” [Citation.]” (*In re V.V.* (2010) 188 Cal.App.4th 392, 399 (*V.V.*.) A continuance may not exceed the period of time justified by the evidence supporting the good cause showing,

and if the court grants a continuance, it must state on the record “the facts proven” in support of the continuance. (*Renee S.*, at p. 196.)

“Continuances are discouraged” (*Ninfa S.*, *supra*, 62 Cal.App.4th at p. 810) and “should be difficult to obtain” (*Jeff M. v. Superior Court* (1997) 56 Cal.App.4th 1238, 1242). The juvenile court has broad discretion in determining whether to grant or deny a continuance, and its decision will be reversed “only upon a showing of an abuse of discretion.” (*V.V.*, *supra*, 188 Cal.App.4th at p. 399.) The court abuses its discretion if its decision “is arbitrary, capricious or patently absurd and results in a manifest miscarriage of justice.” (*In re Karla C.* (2003) 113 Cal.App.4th 166, 180 (*Karla C.*); accord, *Ninfa S.*, at pp. 810-811.)

Here, Mother did not show good cause for continuing or delaying the jurisdictional/dispositional hearing. Initially, we note Mother failed to comply with (or give a reasonable explanation of why she failed to comply with) the statutory requirement that requests for continuances be made in writing and filed at least two court days before the hearing. (See § 352, subd. (a).) In addition, the court’s reasons for denying the continuance request were sound, and the court did not abuse its discretion in denying the request. Mother’s counsel never asserted he did not receive the addendum report within a reasonable time. Furthermore, as observed by the court, Mother had “ample time” to prepare for the jurisdictional/dispositional hearing and nothing in the addendum report “change[d] anything.” Mother provided no explanation as to why she did not have all of her documents at the time of the hearing. She was given an opportunity to testify

but chose not to do so. Instead, she made a statement to the court indicating the allegations were false and K.B. should be returned to her care on family maintenance. Moreover, “delay of the [jurisdictional/dispositional] hearing would have interfered with [K.B.’s] need for prompt resolution of her custody status and her right to a permanent placement” (*Ninfa S.*, *supra*, 62 Cal.App.4th at p. 811.)

Mother argues that in light of her right to present evidence, good cause existed to continue the hearing. She relies primarily on *In re Hunter W.* (2011) 200 Cal.App.4th 1454 (*Hunter W.*). In *Hunter W.*, the juvenile court abused its discretion in refusing the parents’ request to briefly delay or trail the hearings on the parents’ section 388 petitions, and the section 366.26 hearing, from the court’s morning calendar to its afternoon calendar on December 6. (*Hunter W.*, at pp. 1460, 1463.) The hearings on the section 388 petitions were already in progress. The court heard some testimony on the petitions on November 23 and continued the hearings to December 6 at 8:30 a.m. in order to hear additional testimony on the petitions from both parents and from a witness for the father. (*Hunter W.*, at pp. 1459-1460.) Both parents “checked in at calendar call at 8:30 a.m.” on December 6, but neither parent was present when the court reconvened at 10:20 a.m., and neither parent was responding to pages to report back to the court. (*Id.* at p. 1460.) The father’s counsel explained that the father had gone to his treatment program to obtain a signed certificate and would be back by 1:30 p.m. The father’s counsel also said he thought that an officer was going to testify in the court on another

case that morning, “[s]o that’s why I told [the father] to go now so that he would be back by 1:30.” (*Ibid.*)

The juvenile court denied the parents’ requests to trail or continue the hearings to its 1:30 p.m. calendar, or until both parents could be located. (*Hunter W.*, *supra*, 200 Cal.App.4th at p. 1460.) In concluding that the juvenile court abused its discretion in denying the parents’ requests, the *Hunter W.* court first observed that the parents were “not requesting a continuance,” as envisioned in section 352, but rather, were simply asking the court to “hold the matter for a short time so that mother could be located and father could be notified to return to court.” (*Hunter W.*, at p. 1464.) The court also emphasized that the juvenile court did not explain why the matter had to proceed “at that particular time”—that is, at 10:20 a.m. on December 6, and nothing supported the juvenile court’s assertion that the parents were ““playing the system”” and “trying to delay the proceeding.” (*Id.* at pp. 1464-1465.) Rather, the parents were present at the November 23 hearings and would have testified on that date had there been time. (*Id.* at p. 1465.)

Unlike the parents in *Hunter W.*, Mother did not request the court trail the matter for a short time to be heard later in the day. Instead, Mother requested the matter be continued for a week. Further, the court did not hold the hearing in Mother’s absence as the juvenile court did in *Hunter W.* Mother was present at the hearing but declined to testify and instead chose to make a statement. Moreover, the addendum report did not change DPSS’s recommendations from the jurisdictional/dispositional report, but merely

updated the court as to the circumstances of the case. Mother had sufficient time to prepare and defend herself against the allegations in the petition.

We conclude the juvenile court did not abuse its discretion when it found a failure to show good cause and denied the oral request for a continuance at the jurisdictional/dispositional hearing. (See *Karla C.*, *supra*, 113 Cal.App.4th at pp. 179-180; *Ninfa S.*, *supra*, 62 Cal.App.4th at pp. 810-811.)

B. *Due Process Rights*

In addition to arguing the court abused its discretion in denying her request for a continuance, Mother asserts the court violated her due process rights by denying her request. She argues she was not given a meaningful opportunity to present evidence in the addendum report and that she was denied the ability to cross-examine the social worker and persons whose hearsay statements are contained in the social worker's reports.

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" (*Mathews v. Eldridge* (1976) 424 U.S. 319, 333.) Whether a due process right is violated will vary according to the facts of the case. (*In re Daniel C.H.* (1990) 220 Cal.App.3d 814, 832-835 [juvenile court did not violate the father's due process rights by limiting the experts who evaluated the child and by failing to allow him to call his own independent experts].) In determining what process is due, the court balances ""(1) the private interest that will be affected by the official action, (2) the risk of an erroneous deprivation of such interest through the

procedures used, and the probable value, if any, of additional or substitute procedural safeguards, (3) the [dignity] interest in informing individuals of the nature, grounds and consequences of the action and in enabling them to present their side of the story before a responsible governmental official, and (4) the governmental interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.””” (*In re Malinda S.* (1990) 51 Cal.3d 368, 383, superseded by statute on another ground as stated in *People v. Otto* (2001) 26 Cal.4th 200, 207.)

Here, the juvenile court could reasonably conclude Mother had an adequate opportunity to prepare her case. (See *People v. Fuiava* (2012) 53 Cal.4th 622, 650 [“not every denial of a request for more time can be said to violate due process, even if the party seeking the continuance thereby fails to offer evidence. [Citation.]”]; *In re A.B.* (2014) 225 Cal.App.4th 1358, 1366 [no abuse of discretion in denying continuance where the mother’s counsel had two months to investigate case].) Mother had almost two months to prepare for her case and to defend the allegations in the petition. Mother’s counsel never stated he did not receive the addendum report within a reasonable time and provided Mother a copy of the addendum report at the hearing. The addendum report did not “change[] anything,” as the court observed. The recommendations in the addendum report were the same as the recommendations in the jurisdictional/dispositional report. Moreover, the court provided Mother an opportunity to testify at trial but she chose not to do so. In addition, the court did not preclude Mother’s counsel from calling any

witnesses such as the social worker. In fact, the court stated Mother was welcome to put on any evidence at the hearing but never requested to cross-examine the social worker or any other person.

Under the circumstances of this case, we do not find that the juvenile court's denial of Mother's request for a continuance was a denial of due process.

C. *Harmless Error*

Even if we assume, for the sake of argument, the juvenile court abused its discretion in denying Mother's counsel's request to continue the hearing, the error was harmless. Mother has not demonstrated a reasonable probability that she would have realized a more favorable result had the hearing been continued to allow Mother more time to review the addendum report and to provide documentary evidence at the hearing. (*D.E. v. Superior Court* (2003) 111 Cal.App.4th 502, 513-514 [standard of reversible error articulated in *People v. Watson* (1956) 46 Cal.2d 818, 836 applies in determining whether conduct of dispositional hearing in party's absence was harmless]; *In re Jesusa V.* (2004) 32 Cal.4th 588, 624-625 [violations of statutory rights are reviewed for harmless error pursuant to *Watson*]; *In re Kobe A.* (2007) 146 Cal.App.4th 1113, 1122 [same].)

As the court noted, the addendum report did not change anything. There were no changes to DPSS's recommendations in the addendum report. There were also no changes to the information that was originally available to Mother in the detention and jurisdictional/dispositional reports. The addendum report merely provided updated

information since the prior court hearing. Mother was provided an opportunity to testify, call witnesses, and present evidence. Even if Mother had presented police reports and documents showing she was enrolled in services and had certificates of completion, the record contains sufficient evidence to support the court's jurisdictional and dispositional findings. The record is replete with evidence supporting the allegations in the petition, as well as evidence supporting K.B.'s removal from Mother's care and custody. The documentary evidence would not have altered the court's jurisdictional/dispositional findings.

Under the harmless error analysis, we find that it was not reasonably probable that the outcome would have been more favorable had Mother had more time to review the addendum report and to provide documentary evidence at the hearing. The addendum report, as well as the documentary evidence Mother proposed to introduce was not essential to the jurisdictional/dispositional hearing.

IV

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

MILLER
Acting P. J.

SLOUGH
J.